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Moffatt's Trusts Law: Text and Materials (Seventh Edition)

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Moffatt's Trusts Law: Text and Materials (Seventh Edition)

Receipt of the seventh edition of this venerable text has been most welcome, its predecessor being first published back in 2015. While remaining consistent in its updates, the previous editions being published in 5 to 6-year intervals, developments in the law of trusts since the sixth edition have been numerous. While the authors acknowledge that these changes are not revolutionary, they are, nevertheless, evolutionary and of undoubted importance. Judgments of the Supreme Court have been of particular note and these are integrated well within their respective chapters. Authorities such as *Patel v Mirza* [2016] UKSC 42 on the law of restitution and the effect of illegality, the salaciously-themed *PJS v News Group Newspapers Ltd* [2016] UKSC 26, *Marr v Collie* [2017] UKSC 53 on the further potential extension of *Stack v Dowden* [2007] UKHL 17, *Morris-Garner v One-Step (Support) Ltd* [2018] UKSC 20 on methods of quantification for losses suffered as a result of an injunction being refused, and *Burnden Holdings v Fielding* [2018] UKSC 14 with its focus on interpretation and application of s21(1) Limitation Act 1980. In addition to the domestic precedents laid down by the Supreme Court, it is pleasing, although unsurprising, that further developments by the Privy Council are also addressed. Highlights include *Gany Holdings (PTC) SA v Khan* [2018] UKPC 21, an interesting look at the continuing impact of legal presumptions and gratuitous transfers of property. In this author's opinion, however, the jewel of Privy Council decisions handed down since the sixth edition of the text must be *Federal Republic of Brazil v Durant* [2015] UKPC 35, with all of its implications and tantalising consequences for the doctrine of backwards tracing. With so much mutability, the new addition also incorporates an admirable survey of leading academic literature on these and existing issues, together with the possible impact on trusts law of the United Kingdom's impending departure from membership of the European Union.

As an academic with extensive classroom teaching experience at both undergraduate and postgraduate level, the tone of this new edition is also rather refreshing. While the latter students will no doubt benefit greatly from this text's commentary and interpretation of trusts law, it is clear that the main audience for this work are those studying at the former. As such, the tack it takes is of a much more purposive character and this decision makes the text much more approachable than previous iterations. This edition does not seek to merely examine the law, both basic and advanced, and present it as fact. Instead, it looks at the dynamic and shifting context of trusts, whether social, political, economic, legal or a combination of several; this includes both domestically and, in the final chapter, offshore jurisdictions. Using this context as a background, the text then explains how and why trusts arise and the purposes

that they serve. By relating the material, almost universally alien to new students of this challenging area of law, in this manner it is much more accessible and assists students in their understanding of *why* trusts exist and not merely that they do. From a pragmatic perspective, it also feels like a sensible decision to remove the previous edition's chapter on taxation and its relationship to the express trust. While undoubtedly an important and practical area related to trusts law, there are copious other resources available on such *lex specialis* if investigation into the intricacies of taxation is desired. There is ample material on trusts law to cover numerous volumes of an academic text and focusing on this, rather than a peripheral issue such as taxation, is eminently prudent.

With the removal of the chapter on taxation, the opening section feels much more intuitive and its flow is improved. The trust is introduced in the first chapter, which is a somewhat thankless task, made even more difficult given that equity as a system of law is not examined in any great detail (and nor should it, given that this is a text exclusively on trusts law). The following three chapters then examine the creation of the express trust, although there is also reference to resulting trusts and the specific well-taught saga centring around the dispositions of one Guy Anthony Vandervell. This neatly ties up the opening section of the book and provides the reader with a good understanding of what trusts are, why one would wish to create one, and how they come into being.

Following on from this basic introduction, the chapter on trusts and public policy is a very useful holdover from previous editions of the text and one that is too often neglected in more rudimentary works. The importance of public policy and the discretion sometimes inherent in the adjudication of trusts matters by the courts is laid bare, illustrated by such important issues as discrimination, illegality, insolvency and the concealment of assets. A brisk but informative examination of beneficiary rights is also entered into, an essential element that is far too often misunderstood, including material on an issue that is often the focus of student queries: the variation of trusts.

What follows is, for those students planning for a career as a legal professional, the most relevant part of this text. The duties and obligations of trusteeship, together with the management of trusts, their breach, and liability are examined. Given the focus of the text, it is another sensible decision not to focus overtly on the complex and often confusing subject of fiduciary duties at this point and so the discussion is more unsullied than in other

contemporary works. While fiduciary duties are discussed later in the text, the lack of confluence at this stage is to the student's advantage. As with the other sections of the book, an holistic approach allows students to better contextualise the complex issues raised and see them in a more practical manner. In the author's own experience, it is an exercise in futility to present the law in anything other than this way if one is to engage with the target audience. The relevance of statute is reiterated throughout and the impact of changing case law is also explained well.

If there is one particular area of disappointment in the text, it is the relegation of implied trusts and their use in the context of a shared family home to a single chapter. To those well-versed in the teaching of this area, it is recognised as one of the most relevant to the general public and an issue that many readers will have actual or forthcoming experience of. The law itself is also extremely challenging and a deeper look at implied trusts generally and their application in this context specifically would have been extremely useful. Unlike taxation, this issue is one integral to the study of trusts and further development in future editions would be a welcome addition. Inclusion of how this matter is handled by other jurisdictions at the end of the chapter is a nice touch but it is this author's opinion that it does not balance out the lack of content elsewhere.

The law in action focus of this section continues with an examination of the trust's role in the world of commerce. As with the previous chapter, it would have been preferable to dedicate more of this impressive exercise in scholarship to the law on tracing as this also feels somewhat underdeveloped. Strangers' liability, however, is examined thoroughly and there is helpful focus on the nature of liability and the often-difficult semantic differences between claims. While it is understandable that equitable remedies were included in this section on trusts in commerce, they do still feel somewhat superfluous and the section would have felt more satisfying had tracing been given the advantage of extra depth, which excision of this material would have allowed. Nevertheless, the authors' commitment to an examination of equitable remedies will be welcomed by many of those studying this area of law at the undergraduate level, given its general inclusion in standard curricula.

The final sections of the book include several chapters on charities, which is unsurprising given that this is a particular focus on Professor Garton. While this may superficially seem somewhat excessive, the law on charities as they relate to trusts did need a substantial

update. The impact of statutes entering force since the previous edition, such as the Data Protection Act 2018 and the Charities (Protection and Social Investment) Act 2016, needed to be assessed and explained. In addition, the work undertaken by the Law Commission in relation to charities and charitable purpose trusts is helpfully summarised and applied to existing and future developments. While the law related to charities and trusts for charitable purposes may not appeal to every reader's interests, it is still an impressive summary of this often-daunting area of trusts law and addresses the vast majority of questions that any of them may have.

It is a nice touch, in this author's opinion, to dedicate the final pages of this tome to trusts law in an international context. This addition assists in relating this often-cited 'English' construction of equity to both domestic and international students and continues the book's purposive theme. By examining jurisdictions beyond our own shores, the rationale behind them and the contexts in which they may arise is conveyed. It is also helpful to see how other jurisdictions handle aspects of trusts law and have developed their own rules, which may or may not one day become incorporated into our domestic law. The importance of offshore jurisdictions and the implications for domestic wealth and taxation has been reported extensively by the media in recent times and it is helpful that questions related to these vehicles may be answered in the ultimate section.

Overall, while this author has been critical of some of the decisions made in the composition of this latest edition of *Moffatt's*, it does not alter the impressive work of scholarship that it undoubtedly represents. As such, the copy in my possession will, undoubtedly, become well-worn and dog-eared in the years until the next edition is published.

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